

TESTIMONY BEFORE THE COMMITTEE OF AGRICULTURE

MARCH 16, 2005

PRESENTED BY RICHARD K. LEWIS

CHIEF OPERATING OFFICER OF DAIRYAMERICA, INC.



DairyAmerica™

DairyAmerica, Inc. 4974 E. Clinton Way, #C-221 Fresno, CA 93727-1520

Mr. Chairman, and Members of the Committee on Agriculture, my name is Rich Lewis, Chief Operating Officer of DairyAmerica.

My testimony before this committee today concerns the term “**payment of cash in advance**” and the effect the **redefinition** of this term will have on U.S. agricultural trade with Cuba - specifically the export sales of NFDM (Non Fat Dry Milk) from the United States by DairyAmerica Members.

BACKGROUND:

DairyAmerica is a non-profit marketing cooperative representing 8 Cooperatives located throughout the United States. DairyAmerica was incorporated on May 18, 1995 to market NFDM, Buttermilk and Whole Milk Powder production for its Members in a manner consistent with the articles of incorporation and by-laws that allow diversity of sales and the greatest return to Members.

DairyAmerica markets Member powder throughout the United States and the world. Since 1995, our Members have worked to produce dairy products that are consistent with the needs of our customers. Our member cooperatives have consistently been reliable producers of high quality milk powders for the domestic market. Because international specifications for milk powders can be, and very often are, different than those specifications required by U.S. customers, Dairy America Cooperatives have invested extensive time and resources to build the same reliability domestic customers currently experience in the international markets.

DairyAmerica’s production and sales have experienced a tremendous transition since 1995, but particularly over the last 4 years. For instance, DairyAmerica has worked closely with the overseas market development programs of the U.S. Dairy Export Council, which has helped DairyAmerica become a serious supplier of milk powders internationally.

THE ISSUE:

Included in our international marketing plan are sales to the Cuban market. We have supplied this market with Member production since late 2003 - mostly with NFDM from a Member location in Winnsboro, TX, but from other facilities as well--including sites in Massachusetts; Pennsylvania and California. Since DairyAmerica began shipping milk powder to Cuba, U.S NFDM sales to Cuba have reached approximately 25.3 million lbs., with a value in excess of \$24 million USD. This powder was exported using procedures

normally followed when selling on payment terms commonly known as “cash in advance,” as required in the original OFAC regulations. Specifically, the procedure entailed (1) shipping the product from a U.S. port, and (2) advising our Cuban buyer of its shipping status (an “on-board” bill of lading is prepared by the shipping company). At this point, the process begins for full payment in advance of the buyer having ownership of the product. Once full payment is received, the “on board” bills of lading - the shipping documents that allow the buyer to gain control of the product – are released to the buyer.

Once the product is “on-board” the vessel, it usually takes one day to prepare documents and one day to get documents shipped to the customer for review and payment authorization. Shipments to Cuba are traditionally on Thursday, so document receipt by our customer takes place the following Monday. Documents are reviewed, and assuming no revisions are needed, payment by the customer is authorized on Tuesday. Our experience shows that payment posts to our account within 2 to 3 days from the date of authorization for payment. During this time period, the NFDM powder is held in DairyAmerica’s account until our bank provides proof to us that the funds have been received in our account. Then, and only then, do we authorize release of documents so our customer can take possession of the NFDM.

It is important to reiterate and point out that under this commonly used international trading practice, the Cuban buyer will not gain control and ownership of the powder until payment has been made. This practice fully complies with the spirit and the letter of the “2000 Export Enhancement Act” (TSREEA).

Based on my understanding of OFAC’s recent “redefinition”, if the current ruling remains unchanged for payment of cash in advance—requiring “*cash payments from Cuba before the U.S. commodities even leave the U.S. port*” - we will see the remaining 6,000 MT (13.2 million lbs.) under current contracts in jeopardy of being cancelled. I have also heard that sales covered by a “letter of credit” may be considered by OFAC as an alternative form of payment to “cash in advance” for sales to Cuba. This not only adds another layer of complexity to making the sale, but also increases the cost and time to receive our funds on those sales. Today, we have 1,000 MT (2.2 million lbs.) of powder on hold that will not ship until we understand the ruling on payments, in order to remain compliant with the terms of sales to Cuba. There is now added costs for storage of the NFDM and cost of money, since we were going to ship on March 17 and are now on an indefinite hold. This is powder that was specifically produced, including added costs, to fit the particular needs of our Cuban customer.

Under our current contract, we have 2,014 MT (4.4 million Lbs.) of NFDM left to ship, including the 1,007 MT on hold. We have an additional 4,028 MT (8.9 million Lbs.) under separate contract scheduled for delivery from June to September 2005. Additionally, we are working to negotiate an additional 4,000 to 6,000 MT contract (8.8 million to 13.2 million lbs.) for delivery in late 2005/early 2006. We have been informed by Mr. Pedro Alvarez, Chairman and C.E.O. of Alimport that “cash payment in advance

of leaving U.S. soil could lead to the cancellation of the remaining contract and halt discussions for additional sales”. Unfortunately, 26 million lbs. of NFDM will then be required to find a new home either in the international or domestic market. While it is certainly not our most preferred buyer, one of those domestic markets is the Dairy Price Support Program (CCC). Dairy America has made huge efforts and investments to seek international markets as opposed to resorting to selling to the CCC. However, given OFAC’s recent reinterpretation of trade regulations, we may find that we have no choice but to sell to CCC again, sooner than we ever expected because the U.S. government is creating new barriers to legitimate commercial outlets for our product. .

It is ironic that while the United States Trade Representative, the National Milk Producers Federation, the U.S. Dairy Export Council fight unfair trade barriers imposed by foreign countries on a regular basis, the U.S. government is imposing new and detrimental trade barriers on its own industries. The U.S. agriculture surplus is disappearing at a rapid pace contributing to our huge national trade deficit. Meanwhile, we are constantly reminded by the government of the benefits of trade. Given these two forces, it is extremely difficult for us to understand why the U.S. government intends to force U.S. companies to forego export opportunities. We ask this committee to allow us to counter the increased level of imports with which the U.S. dairy industry must contend with opportunities in foreign markets, particularly those markets in which the United States has a natural advantage due to geographical proximity.

Thank you for your time and the opportunity to present DairyAmerica’s specific concern regarding the “redefinition” of the term “payment of cash in advance” and its effect on trade with Cuba, and potentially other international customers.

Sincerely,

Richard K. Lewis
Chief Operating Officer, DairyAmerica, Inc.